

**SEEKAMP ENVIRONMENTAL
CONSULTING, INC.**

129 Route 125, Kingston, NH 03848
Tel: 603.642.8300 Fax: 603.642.8500

March 15, 2005

Water Council
C/o Dpt. of Environmental Services
Water Division
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

RECEIVED

MAR 16 2005

**Re: Administrative Order No. WD 05-03
Senter Brothers, Inc., 22 Old Road Rear, Plaistow, NH
Wetlands Bureau File 2004-2912**

05-03 WC

Dear Members of the Council,

In accordance with the requirements of Env-WC 200 (New Hampshire Code of Administrative Rules, Procedural Rules), Seekamp Environmental Consulting, Inc., (SEC), on behalf of Senter Brothers, Inc., (Senter), hereby submits the ensuing appeal of Administrative Order No. WD 05-03 [Wetlands Bureau File 2004-2912], issued by the NH Department of Environmental Services on February 18, 2005. The Administrative Order was issued to Senter for impacts to jurisdictional wetland resources and site alteration beyond the scope of a previously issued Site Specific Permit at its Plaistow, NH facility, located at 22 Old Road Rear. Specifically, SEC wishes to appeal Determination D4 of the Administrative Order, which alleges the following:

- D.4: Robert C. Senter, Sr., violated RSA 485-A:17 by exceeding the scope of Site Specific Permit WPS-2984 by altering more than 100,000 square feet of terrain without a permit from the Department.

In response to this allegation, SEC offers the following comments and observations:

As indicated in our December 20, 2004 correspondence to Arlene Allen, DES Compliance Specialist (copy attached), SEC's preliminary assessment of available background information (including copies of approved site development plans and aerial photographs) suggests that the information used by the Department to determine historic and present site impacts may be inaccurate. As stated in February 23, 2005 correspondence with the Department, James M. LaVelle Associates has been contracted to conduct a field survey of existing conditions, including areas actively used as material processing / staging areas, and for stormwater management. Once complete, this information will be compared to the plan prepared previously in support of Site Specific Permit WPS-2984, to determine the extent of unpermitted disturbance, if applicable. Due to conditions present on the site in the time since the Administrative Order was

issued (i.e., significant snow and ice cover), LaVelle Associates has been unable to complete the site work necessary to produce said plans. We anticipate that this work will be complete on or before April 15, 2005. In the interim, SEC has submitted the attached Request to Stay Action in Appeal Proceedings, to allow additional time to compile the above-referenced information, and to determine whether an agreement / settlement can be reached between Senter and the Department during its Request for Reconsideration process.

Request for Reconsideration:

In accordance with the procedures outlined in Section F of Administrative Order No. WD 05-03 [Wetlands Bureau File 2004-2912], Seekamp Environmental Consulting, Inc., (SEC), on behalf of Senter Brothers, Inc., (Senter), submitted a request for reconsideration of the Department's assessment of wetland impacts and violations to the NH DES on March 4, 2005. SEC has not yet received a response to this request.

Summary:

Seekamp Environmental Consulting, Inc., on behalf of Robert C. Senter / Senter Brothers, Inc., hereby respectfully appeals Determination D.4 of Administrative Order WD 05-03. The primary rationale for this appeal is the uncertainty surrounding the Department's assessment of general site impacts. As outlined above, SEC – on behalf of Senter – intends to conduct formal assessments of wetland and overall site alterations, to determine the extent of impact. This information will be presented to the Wetlands Council in support of this appeal as soon as it is available (i.e., once site conditions are favorable).

Please feel free to contact the undersigned if you have any questions or require additional information in order to process the appeal.

Regards,
SEEKAMP ENVIRONMENTAL CONSULTING, INC.

COPY

Michael Seekamp, CWS
Principal / Senior Wetland Scientist

Cc: Commissioner, Water Division
Director, Water Council
Arlene Allen, DES Compliance Specialist
Plaistow Conservation Commission
Plaistow Board of Selectmen
Senter Brothers, Inc.

APPENDIX A

**Administrative Order No WD 05-03
[Wetlands Bureau File 2004-2912]**



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588

FEB 16 2005



Robert C. Senter, Sr., d/b/a/ Senter Bros., Inc.
PO Box 416
Plaistow, NH 03865

ADMINISTRATIVE ORDER
No. WD 05-03

February 15, 2005

Re: Wetlands Bureau File 2004-2912

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Robert C. Senter, Sr. d/b/a Senter Bros., Inc. pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services ("DES"), Water Division, is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Robert C. Senter, Sr. is an individual having a mailing address of PO Box 416, Plaistow, New Hampshire doing business as Senter Bros., Inc., a New Hampshire corporation currently not in good standing with the New Hampshire Secretary of State, having a mailing address of 22 Old Road Rear, PO Box 847, Plaistow, NH 03865.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner has adopted Env. Ws 415 to implement this program.
4. Robert C. Senter, Sr. is the owner of real property located at 22 Old Road Rear, Plaistow, NH, more specifically referenced on Plaistow Tax Map 29 as Lot 40 (the "Property").

5. On December 2, 2004, DES personnel conducted an inspection on the subject property and adjacent properties to assess impacts for a proposed permit for construction of a public roadway. During this inspection, DES personnel observed approximately 6 contiguous acres of disturbed terrain. Within the disturbed area, DES observed a stream with collapsing side slopes and extensive sedimentation into wetlands.

6. On December 6, 2004, DES personnel inspected the property again and observed the following:

- a. Approximately 6.5 acres of contiguous terrain was disturbed through earthmoving activity. Several very large piles of unstabilized sand and soil were stockpiled on the property adjacent to a stream and wetlands. No erosion controls were observed anywhere on the Property.
- b. Within the disturbed area, approximately 320 linear feet of stream channel had been excavated. The slope of the western bank of the stream was vertical, unvegetated, and contained rills and gullies. The eastern bank of the stream was steeply sloped (approximately 1:1) vegetated but unstable, and contained rills that were transporting sediment to the stream channel.
- c. The bed of the stream channel contained deposits of sediment (fill). The sediment in the channel was between 1" and 6" deep and was evident for approximately 300 feet in the bed of the channel. Water was flowing in the channel of the stream. The stream flowed into a forested wetland.
- d. Approximately 1.3 acres of forested wetland was covered with sediment deposition. Of the 1.3 acres, approximately 22,000 square feet of sediment deposition is on an abutting property owned by Raymond T. Nickerson (the "Abutter").
- e. The edge of the forested wetland borders the Little River. Sediment was observed at the edge of the wetland and in the Little River in the form of deltas on both the Property and the Abutter's property.

7. During the December 6, 2004 inspection, DES personnel delineated the boundaries of the open disturbed areas and the stream and wetland areas that contained sediment deposition with Geographic Global Positioning ("GPS") units. Based on this delineation, DES found that 6.5 acres was disturbed through earthmoving activity.

8. Also on December 6, 2004, immediately after the inspection, DES personnel prepared a Field Inspection Report which noted that approximately 1+ acres of sediment had been deposited in a stream, wetlands and a river.

9. The Field Inspection Report also requested that:

- a. The Property be stabilized with erosion controls immediately;
- b. A certified wetland scientist ("CWS") be retained immediately to assist with site stabilization, drainage, and the preparation of a plan to restore the impacted stream, river, and wetlands.

- #### D. DETERMINATION OF VIOLATIONS

- ### E. ORDER

1. Immediately, and no later than February 20, 2005, stabilize all areas subject to erosion into jurisdiction. Where sediment deposition has occurred on abutting properties, obtain written permission from the abutter to enter, stabilize where necessary, and delineate the wetlands. Special attention should be given to the area of Little River.
2. By April 1, 2005, submit to DES for approval, a plan with dimensions, drawn to scale, prepared by a certified wetland scientist and stamped by a licensed surveyor which includes the following:

1. The delineated footprint of all wetlands, streams, and rivers on the Property as well as relevant wetland areas of abutting properties prior to disturbance. The delineation should be in accordance with Section F of the Corps of Engineers Wetlands Delineation Manual ("Section F");
 2. The delineated footprint of all disturbed areas in accordance with Section F;
 3. The area, in square feet, of disturbance on the Property and on abutting property(s);
 4. A plan for re-establishing the wetland to its original footprint;
 5. A proposed means of sediment and erosion control;
 6. A proposed schedule and restoration sequence listing equipment and methods for accomplishing restoration;
 7. A proposed planting plan for the re-establishment of any lost wetland vegetation;
 8. A monitoring and reporting schedule including an initial report to DES and at least two restoration progress assessment reports each after a full growing season.
3. Fully implement restoration as conditioned in a separate DES Restoration Approval Letter by June 30, 2004.
4. By February 28, 2005, for areas on the Property that have been disturbed in excess of Site Specific Permit WPS-2984, submit a stormwater and drainage management plan in accordance with RSA 485-A:17 and associated Rules Part Env-Ws 415.
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, other than appeals, to DES as follows:

Arlene Allen, Compliance Specialist
DES Water Division
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: aallen@des.state.nh.us

F. APPEAL

Any person aggrieved by determinations D.1 – D.3 of this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing, if in its opinion, good cause is provided in the motion.

Filing an appeal or motion for reconsideration does not relieve Robert C. Senter, Sr. of the obligation to comply with the Order

Any person aggrieved by determination D. 4 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Appealing the Order or requesting reconsideration does not automatically relieve Robert C. Senter, Sr. of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A RSA 485-A provide for administrative fines, civil penalties and criminal penalties for the violations noted in this Order, in particular ongoing erosion and stabilization requirements as well as for failing to comply with the Order itself. Robert C. Senter, Sr. remains obligated to comply with all applicable requirements.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.

COPY

Harry T. Stewart, P.E., Director
Water Division

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7004 0750 0001 2491 8369

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
Jennifer J. Paterson, Sr. Asst. Attorney General, NHDQ/EPB
Plaistow Conservation Commission
Plaistow Board of Selectmen
Rockingham County Registry of Deeds

APPENDIX B

Additional Correspondence



129 Route 125, Kingston, NH 03848
Tel: 603.642.8300 Fax: 603.642.8500

February 23, 2005

FILE COPY

Arlene Allen, Compliance Specialist
DES Water Division
P.O. Box 95
Concord, NH 03302-0095

**Re: Administrative Order No. WD 05-03
Senter Brothers, Inc., 22 Old Road Rear, Plaistow, NH
Wetlands Bureau File 2004-2912**

Dear Ms. Allen,

The purpose of this correspondence is to respond to the concerns and mandates outlined in Administrative Order WD 05-03, issued by the NH Department of Environmental Services (NHDES, "The Department") on February 15, 2005 for the property located at 22 Old Rear Road, Plaistow. As you are aware, Seekamp Environmental Consulting, Inc., (SEC) was previously retained by Senter Brothers, Inc. (Senter), to resolve outstanding enforcement issues on the site. To that end, SEC has completed a preliminary delineation of the current limits of wetland resources on the site, as well as construction oversight during installation of a series of settling basins to reduce the velocity of water and amount of suspended solids flowing towards Little River.

According to the Order issued by NHDES, Senter must immediately (no later than February 20, 2005) stabilize all portions of the site subject to erosion into areas within the Department's jurisdiction [Condition E.1]. As discussed in SEC's December 20, 2004 letter, temporary erosion control measures (i.e., staked siltation fence) have been installed at the limits of the existing material processing area, in order to prevent erosion of material into existing stormwater management structures and/or adjacent wetlands. In addition, the primary source of erosion (sloughing of bank associated with an existing stormwater management swale, which outlets directly to vegetated wetlands) has been eliminated via the construction of a series of settling basins within the same approximate footprint. These basins were constructed as part of the initial site stabilization effort, and include riprapped emergency spillways and outlets, as well as sideslopes that have been mulched and seeded. Additional site assessment, stabilization, and remediation efforts are currently hindered by the presence of snow and ice cover. Therefore, SEC - on behalf of Senter - hereby respectfully requests that the DES grant an extension to the deadline for Condition E.1 to April 15, 2005 (or until site conditions allow), to provide additional time to stabilize areas on adjacent property(s) that have been impacted by

siltation and/or to conduct additional delineation of wetland resources, including Little River and any tributaries thereto.

It appears that the seasonal stream cited in Section D.1 of the Department's Order includes a stormwater management swale in its assessment of impacts to jurisdictional resources. SEC requests clarification as to DES jurisdiction over approved stormwater management structures that -- over time -- develop wetland characteristics.

In addition to the above, Senter must provide the Department with information pertaining to proposed stormwater management and site drainage prior to February 28, 2005, particularly for areas disturbed in excess of Site Specific Permit WPS-2984. In order to ensure that the information provided to DES is appropriate and adequately addresses site drainage, SEC proposes the following:

- Conduct a survey of existing site conditions, including the existing limits of jurisdictional wetlands and stormwater management structures;
- Evaluate / compare the existing conditions plan to that prepared previously in support of Site Specific Permit WPS-2984, to determine the extent of unpermitted disturbance, if applicable.
- Estimate, using historic (circa 1980) aerial photographs, the limits of jurisdictional wetlands prior to Senter's receipt of a Site-Specific permit.
- Evaluate / compare (using overlays onto the existing conditions plan) the historic and current limits of jurisdictional wetland resources, to determine the extent of encroachment (if any) into wetlands as a result of the site's use as a material staging area.

Given the amount of survey and engineering work that will likely be required in order to provide the above information, SEC -- on behalf of Senter -- respectfully requests that the Department grant an extension to Condition E.4 until April 15, 2005 (or until site conditions are favorable).

Once the above-referenced background work is complete, SEC will present the NHDES with appropriate plans for permanent site stabilization, as well as restoration and/or mitigation of wetland impacts, if necessary.

Please contact the undersigned if you have any questions or to confirm the information contained above.

Regards,

SEEKAMP ENVIRONMENTAL CONSULTING, INC.

A large, bold, black-outlined word "COPY" is centered on the page. Overlaid on the word is a handwritten signature in black ink that reads "Michael Seekamp". The signature is written in a cursive, flowing style.

Michael Seekamp, CWS
Principal / Senior Wetland Scientist

Cc: Senter Brothers, Inc.
File

**SEEKAMP ENVIRONMENTAL
CONSULTING, INC.**

129 Route 125, Kingston, NH 03848
Tel: 603.642.8300 Fax: 603.642.8500

January 3, 2004

Arlene Allen, P.E., Civil Engineer
New Hampshire Department of Environmental Services
Water Division, Land Resources Management
29 Hazen Drive, P.O. Box 95
Concord, NH 03302

FILE COPY

RE: Senter Bros., Inc., Corner Old Road, Route 125, Plaistow, NH (SITE)

Dear Ms. Allen,

Seekamp Environmental Consulting, Inc. (SEC) has prepared the ensuing letter as a follow-up to our December 20, 2004 correspondence regarding enforcement issues at the above-referenced site. As you may recall, SEC anticipated that we would delineate the limits of wetland resource areas on or before December 24, 2004. However, due to weather conditions (i.e. snow and frozen soils), SEC was unable to conduct a conclusive delineation of jurisdictional wetlands on site in that time frame. Crucial information (i.e. soils) were not readily accessible, due to the frozen ground surface. Given current conditions, however, it is possible that we will be able to complete the delineation this week.

As discussed during our telephone conversation last Wednesday, SEC would like to schedule a site walk with the DES (possibly later this week) to evaluate site conditions, including site stabilization and mitigation efforts conducted by Senter Bros, Inc.

Please feel free to contact the undersigned or Laurianne Powers, SEC Project Manager, if you have any questions or require additional information.

Cordially,
Seekamp Environmental Consulting, Inc.


Michael Seekamp, CWS

Principal / Senior Wetland Scientist

Cc: Senter Bros, Inc.

December 8, 2004 site evaluation, one of the two catchbasins located on the eastern shoulder of Route 125 was observed to be completely blocked. Evidence of flooding and damage to both the property owned by Senter Brothers and adjacent, upgradient land was apparent. Removal of existing impediments to stormwater flow within the catchbasins, therefore, is imperative to preventing future erosion problems and property damage.

A preliminary assessment of available background information (including copies of approved site development plans) suggests that the information used by the DES to determine historic and present wetland impacts at the site may be inaccurate. SEC plans to conduct a delineation based on current site conditions on or before December 24, 2004. In addition, we will further evaluate available plans and site information, to more accurately define the historic limits of wetland resource areas.

At your convenience, SEC would like to schedule a site walk with DES, in order to evaluate existing site conditions, including the limits of wetland impacts (as determined by both DES and SEC), as well as the activities conducted by Senter Brothers, Inc., in response to the DES enforcement action.

We look forward to your response. Please feel free to contact the undersigned or Laurianne Powers, SEC Project Manager, if you have any questions or require additional information.

Sincerely,
SEEKAMP CONSULTING, INC.

Michael Seekamp
COPY

Michael Seekamp, CWS
Principal / Senior Wetland Scientist

Cc: Senter Brothers, Inc.
file

**SEEKAMP ENVIRONMENTAL
CONSULTING, INC.**

129 Route 125, Kingston, NH 03848
Tel: 603.642.8300 Fax: 603.642.8500

FILE COPY

December 20, 2004

Arlene Allen, P.E., Civil Engineer
New Hampshire Department of Environmental Services
Water Division, Land Resources Management
29 Hazen Drive, P.O. Box 95
Concord, New Hampshire 03302

Re: Senter Brothers, Inc., Corner of Old Road, Route 125, Plaistow, NH

Dear Ms. Allen,

This letter is a follow-up to our December 8, 2004 correspondence regarding the above-referenced site. As discussed in our previous letter, Seekamp Environmental Consulting, Inc., (SEC) is currently monitoring the progression of site stabilization and erosion control activities, per the conditions outlined in your December 6, 2004 Site Inspection Report. SEC initially evaluated the site on December 8, 2004, at which time a preliminary assessment of wetland impacts and ongoing erosion was conducted. A second site visit was conducted on December 15, 2004, to evaluate Senter Brothers' progress in stabilizing the site.

Work conducted to date includes the installation of temporary erosion control measures – specifically, staked siltation fence to offset existing material processing areas from stormwater structures and jurisdictional wetlands; and installation of haybale checkdams within the existing stormwater management swale, to provide further protection of Little River and its associated wetlands and tributary. In addition, Senter Brothers, Inc., has constructed a series of settling basins and sediment forebay in the vicinity of the existing stormwater management swale, to better filter sediments from stormwater prior to discharge in the vicinity of wetland resource areas, and to prevent additional impacts associated with erosion of the channel during high volume - high velocity flows. [Please refer to the attached photographs, depicting site conditions on December 15, 2004.]

During our December 15, 2004 site evaluation, stormwater discharge at the outlet of the settling basins was observed to be clean. The surrounding slopes have been stabilized with riprap and/or loamed, seeded, and mulched. Additional erosion control / stormwater management measures are planned, including installation of an earthen berm at the limits of the existing work zone, as well as construction of a swale to direct stormwater from the active work area to the settling basins.

To further protect the site against future erosion problems, SEC recommends that the catchbasins located on Route 125 be cleaned of sediment and debris. During SEC's

December 8, 2004 site evaluation, one of the two catchbasins located on the eastern shoulder of Route 125 was observed to be completely blocked. Evidence of flooding and damage to both the property owned by Senter Brothers and adjacent, upgradient land was apparent. Removal of existing impediments to stormwater flow within the catchbasins, therefore, is imperative to preventing future erosion problems and property damage.

A preliminary assessment of available background information (including copies of approved site development plans) suggests that the information used by the DES to determine historic and present wetland impacts at the site may be inaccurate. SEC plans to conduct a delineation based on current site conditions on or before December 24, 2004. In addition, we will further evaluate available plans and site information, to more accurately define the historic limits of wetland resource areas.

At your convenience, SEC would like to schedule a site walk with DES, in order to evaluate existing site conditions, including the limits of wetland impacts (as determined by both DES and SEC), as well as the activities conducted by Senter Brothers, Inc., in response to the DES enforcement action.

We look forward to your response. Please feel free to contact the undersigned or Laurianne Powers, SEC Project Manager, if you have any questions or require additional information.

Sincerely,
SEEKAMP ENVIRONMENTAL CONSULTING, INC.

Laurianne Powers **COPY** *Michael Seekamp*
Michael Seekamp, CWS
Principal / Senior Wetland Scientist

Cc: Senter Brothers, Inc.
file

ATTACHMENT 1



Photo #1: View of blocked catch basin on eastern edge of Route 125. Catch basin is located in the foreground of the picture.

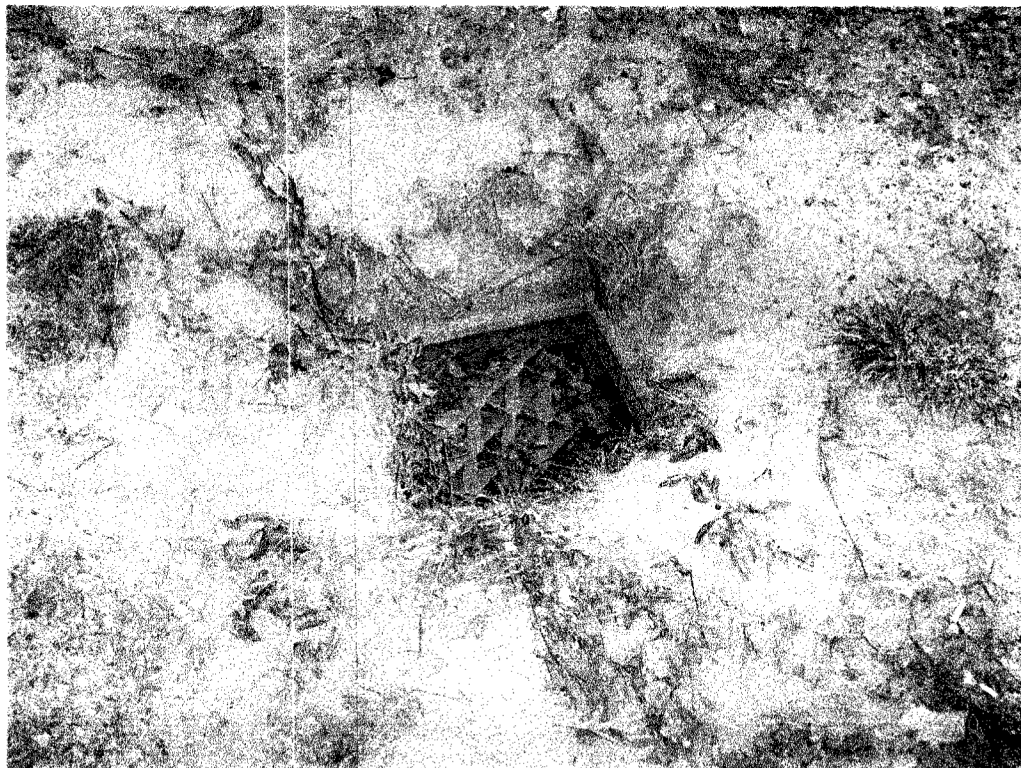


Photo #2: Overhead view of blocked catch basin.



Photo #3: View of settling basins (outlet to basin #2 in left hand corner of photo with rip rapped spillway). Note siltation fence and mulched side slopes in foreground.



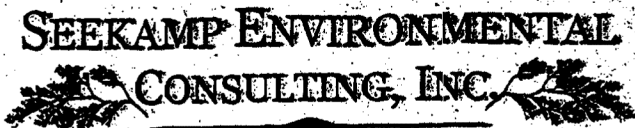
Photo #4: View of settling basin outlet. Wetland is located to the left of photo. Water quality clear.



Photo #5: View of constructed settling basins and seeded, re-graded, loamed and mulched side slopes. The earthen berm will be located approximately at the siltation fence, to offset material processing activities from the settling basins. A swale will be constructed up-gradient of the berm to direct storm water towards the settling basins / forebay.



Photo #6: View of outlet of settling basins. Wetland is located to rear of photograph. Note hay bale / silt fence check dams at outlet and within stream channel.



129 Route 125, Kingston, NH 03848
Tel: 603.642.8300 Fax: 603.642.8500

December 8, 2004

Arlene Allen, P.E., Civil Engineer
New Hampshire Department of Environmental Services
Water Division, Land Resources Management
29 Hazen Drive, P.O. Box 95
Concord, New Hampshire 03302

FILE COPY


Re: Corner Old Road, Route 125, Plaistow, NH

Dear Ms. Allen,

Seekamp Environmental Consulting, Inc., (SEC) has been retained by Senter Brothers, Inc., to provide wetlands consulting services in the form of erosion control inspection / monitoring for the above-referenced parcel, located on Old Road (Route 125) in Plaistow, NH. We are in receipt of your December 6, 2004 Wetlands Inspection Report, and will be conducting a detailed site inspection on or before December 15, 2004, to evaluate the issues identified therein. Emergency erosion control measures will be implemented immediately. A report will be provided to the DES on or before December 31, 2004, identifying and describing each impact area, as well as the proposed wetland restoration / mitigation, stormwater management, and/or erosion and sedimentation control efforts that will be required in order to bring the site into compliance with all state and federal requirements, and prevent future impacts.

We look forward to working with the Department to resolve the issues identified in its December 6th site report. In the interim, please feel free to contact the undersigned if you have any questions or require additional information.

Regards,
SEEKAMP ENVIRONMENTAL CONSULTING, INC.


Michael Seekamp, CWS
Principal / Senior Wetland Scientist

Cc: Senter Brothers, Inc.
file